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Crl.O.P.No.23227 of 2023
in Crl.A.SR.No.49931 of 2023

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M.NIRMAL KUMAR, J.

This Criminal Original Petition is filed to grant leave to appeal before this Court against the order of acquittal in C.C.No.542 of 2016 on the file of the Fast Track Court [Magisterial Level], Alandur.

2.Heard the learned counsel appearing on behalf of the petitioner and perused the materials placed on record.

3.The petitioner is a Tailor who saved his hard earned money to construct a house. The respondent/accused is known to him for the past several years who is running a Bakery. On the request of the respondent/accused, the petitioner had given him a loan of Rs.5,00,000/- on 20.05.2015. Thereafter on 07.07.2015, acknowledgement of debt was received from the respondent and along with the same, the respondent handed over two cheques of Rs.2,50,000/- each. When the cheques were presented for encashment, the same was dishonoured and following the



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statutory provisions, the petitioner filed the complaint in C.C.No.542 of 2016.

4.The primary ground on which the Trial Court dismissed the complaint and acquitted the respondent/accused is that in Ex.P2/Acknowledgement of debt the signature of both the respondent and his wife has been denied which is contra to the stand taken by the respondent in the reply notice as well as when petition was filed earlier in C.M.P.No.535 of 2018 seeking to send Ex.P2 for forensic study to ascertain the signature of the respondent, the Trial Court by order dated 20.08.2018 rejected the plea on the ground that the respondent had not disputed the signature or contents. Further it is held that Ex.P2 is only a supporting document and when the cheque is not disputed, the ingredients of Section 138 of NI Act are not affected. But the Trial Court in paragraph No.19 of the judgment given a contrary finding as though the cheques were given as security and the accused had denied the signature in Ex.P2. Further it was held that the stamp paper is proved by the accused to be one with wrong date and wrong number and hence, Ex.P2 is unreliable. Further, the Trial



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Court relied upon the judgment of the Apex Court in the case of *M/s.Indus Airways Private Limited and others vs. M/s.Magnum Aviation Private Limited and other [C.A.No.830 of 2014]*, wherein the Apex Court held that in the case of security cheque for future contract is relied upon, proceedings cannot be initiated. But in this case, it is not a future contract and the cheque has been issued for the amount already received by the respondent/accused. Hence, the Trial Court on wrong appreciation of evidence and wrong understanding of the judgment of the Apex Court dismissed the complaint filed by the petitioner.

5.Finding reason and force in the submissions made by the learned counsel for the petitioner, this Court is inclined to grant leave. Accordingly, leave is granted.

16.10.2023

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Note: Registry is directed to number the Criminal Appeal, if it is otherwise in order and the post the same for Admission.

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